

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508 - TE/GE
Cincinnati, OH 45201

Date: [REDACTED]

Employer Identification Number:
[REDACTED]

Person to Contact - I.D. Number:
[REDACTED]

Contact Telephone Numbers:
[REDACTED]

Phone

FAX

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(4) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

As your organization has not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1041 if you are a Trust, or Form 1120 if you are a corporation or an unincorporated association.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed Form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in the enclosed Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice

[REDACTED]

Requirements as set forth in section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

[REDACTED]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Enclosure I

Issues

Are you exempt under section 501(c)(4) of the Code? Alternatively, do you qualify for quasi-exemption under section 528 of the Code? No, because of the following reasons:

- a. You are not a "homeowners association" as that term is defined in the Code since your organization is solely a condominium form of ownership of commercial property as oppose to residential property.
- b. You do not serve a community which bears a reasonable recognizable relationship to an area ordinarily identified as governmental.
- c. You do not offer facilities for the use and enjoyment of the general public.
- d. You serve the private interest of a pre-selected group of individuals including shareholders and unit occupants and their visitors or customers of a privately owned commercial property.
- e. The benefits generated by the organization are (a) an essential part of the physical and non-physical attributes of the property, its land and extended areas and (b) are gained by the members of the organization and not by the general public.
- f. You function as an instrument of the owners without which the commercial property cannot function as an income-generating property. The activities conducted by the organization are the activities that would otherwise be performed by the individual owners had the organization ceased to exist.

Facts

Article II of your Articles of Incorporation states that your organization was formed for the operation and management of a commercial condominium.

Article 17 of the Declaration of Condominium dated [REDACTED] (hereinafter, "Declaration") defines the developer as "InvestGroup Development, Inc., a Florida corporation." There is no indication that the developer is incorporated under the provisions of Florida's non-profit statutes.

[REDACTED]

Article 3 of the First Amendment to the Declaration of Condominium of [REDACTED] ("First Amendment") states you intend to construct a single story warehouse and office building on the property consisting of approximately [REDACTED] square feet of gross office space, divided into [REDACTED] office/warehouse units.

In addition, your bylaws indicate the for-profit developer has retained control of the board of directors (see e.g., Article II, sections 1 and 7 of the Bylaws).

Membership of the applicant organization is compulsory as stated in Article 22(b) of the Declaration: "All unit owners shall automatically be members of the Association, and said membership shall terminate when they no longer own such Unit(s)."

Article 14(c) of the Declaration states that any surplus from the operation of the organization shall be owned by its members according to the shareholding of each member.

Law

Section 501(c)(4)(A) of the Code provides for the exemption from Federal income tax of civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

Section 501(c)(4)(B) of the Code states that subparagraph (A) above shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Section 528 of the Internal Revenue Code describes the requirements of a homeowners association in order for an organization to be classifiable to be a homeowners association. Section 528 provides in part that to be classifiable under this Code section it must pass the percentage income rule which states income must be obtained from owners of residential units.

Section 1.501(c)(4)-1(a)(2)(i) of the Regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one that is operated primarily for the purpose of bringing about civic betterment and social improvements.

[REDACTED]

To meet the requirements of section 501(c)(4), it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Application of Law:

To satisfy the exempt standards of section 501(c)(4) an organization must be operated 'exclusively' for social welfare of the community in the full municipal sense as described by Revenue Ruling 72-102, 1972-1 C.B. 149. Failure to meet the community test results in disqualification of recognition under section 501(c)(4).

Said Revenue Ruling 72-102 describes a nonprofit organization formed to preserve the architecture and appearance of a housing development, and to own and maintain common green areas, streets, and sidewalks for use of all the development residents qualifies for exemption; however, contributions to the organization are not deductible. The development is not a commercial property but is residential and its territory is extensive enough to be considered 'municipal.'

Revenue Ruling 78-86, 1978-1 C.B. 151 describes an organization established by merchants who operate a public parking facility that provides parking for the merchants' customers free or at a reduced rate. It does not qualify under section 501(c)(4) because it primarily serves the private interests of the merchants and is a business. The primary goal is to make it attractive or convenient for others to visit the property, thereby benefiting the merchants occupying the property. The primary purpose of the visitor is neither for recreation nor for visiting the parking lot but for purpose of visiting the merchants.

Section 501(c)(4) of the Code was amended by Taxpayer Bill of Rights 2, P.L. 104-168 (1996) to prohibit inurement to insiders on or after September 14, 1995. You stated (a) that a developer controls the board, which are insiders relative to the ordinary members, (b) that all membership are compulsory and (c) that members are levied certain fees at the discretion of the board. The fact that a property developer, together with the board that it controls, imposed a compulsory membership on its occupants and owners, and expropriated a compulsory fee income on occupants and owners is regarded as inurement of organization earnings to insiders.

To meet the public interest requirements an organization must not pursue private interest and there must be no inurement of earnings to any interested persons. Failure to meet the absence of private benefit test results in disqualification of recognition under section

[REDACTED]

501(c)(4). See e.g., Revenue Ruling 74-17, 1974-1 C.B. 130 which describes the private benefits of a condominium, and disqualified the organization from being exempt under section 501(c)(4).

An alternative to exemption under section 501(c)(4) for homeowners associations is section 528. This section applies, in part, to condominium management associations organized and operated to acquire, build, manage, maintain, and care for the property in a condominium project, substantially all of whose units are homes for individuals. Since the property you own is for commercial purposes as opposed to residential purposes, section 528 does not apply to you.

Applicant's position:

1. Applicant maintains that by "Declaration" of the organization as a condominium and the dedication of its resources to a common area is sufficient to qualify for exemption under section 501(c)(4). When asked why the organization is qualified the response is that the "Declaration" document itself speaks for the organization's qualification for section 501(c)(4) recognition, particularly with respect to its common areas. When asked whether the public has any reason to visit the common areas, the response was that visiting the property and its occupants provides the reason to visit since there is an absence of recreational facility.
2. A response letter dated [REDACTED] from the applicant indicates that there is reliance on the "Declaration" document that the organization is a condominium and that a condominium is qualified under section 501(c)(4) just because it is formed as a condominium, even though it possesses all the features of shareholding and commercial activities.

Service's response to applicant's position:

A condominium form of ownership does not automatically entitle you to exemption under section 501(c)(4). Revenue Ruling 74-17, supra, denied exemption to a condominium association because its activities were for the benefits of its members as oppose to promoting the social welfare.

Our contention is you are dedicating your activities and assets primarily to the private benefit of shareholders who are members. Additionally the for-profit property developer controls your organization and has been imposing upon all owners and occupants a compulsory fee through its compulsory membership program. These members are owners of commercial real estate and are delegating

[REDACTED]

substantially all traffic activities to the organization's operation. The members are themselves prevented from conducting similar activities that you are conducting by virtue of the charter of the condominium. These are commercial activities essential to run a viable operation for the owners. The common areas that you described are an extension to private real estate and visits to these common areas serve a commercial purpose rather than a municipal or community one.

Condominium associations are eligible to qualify for quasi-exemption under section 528 for residential property. However, since your organization owns commercial property, this precludes qualifying under section 528.

Conclusion:

Based on the facts presented above, we hold that your organization does not meet the requirements for tax exemption under section 501(c)(4) of the Code.

Accordingly you do not qualify for exemption under section 501(c)(4) of the Code because you do not meet the requirements in section 1.501(c)(4)-1 of the Regulations.

We also hold that you do not qualify under the alternative section 528 of the Code.

Form 6018
(Rev. Aug. 1983)

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption under section 501(c)(4).

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(c)(), effective

☐ Classification as a private foundation described in section 509(a), effective

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date